

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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SIGNATURE SURGERY CENTER LLC,  
d/b/a SIGNATURE PLASTIC  
SURGERY, a Nevada Corporation; and  
HIMANSU SHAH, an Individual;

Plaintiffs,

v.

CEL SERVICES GROUP, INC. d/b/a  
INSIGHT SURGICAL EQUIPMENT Co., an  
Illinois corporation; and ANDREW SIROTA,  
an Individual;

Defendants.

Case No. 2:21-cv-00215-JCM-EJY

**ORDER**

**I. Background**

Plaintiffs filed their Complaint on February 10, 2021. ECF No. 1. Subsequently, Plaintiffs made multiple unsuccessful attempts to effect timely service on Defendants at the address Defendants registered with the Arizona Corporation Commission and alternative addresses. All attempts were unsuccessful. ECF No. 6. Additional time was granted to Plaintiffs to effect service when a new location for Defendants was updated with the Arizona Corporation Commission (ECF No. 7); however, Plaintiffs have not been able to access Defendants because the address is an apartment building with secured doors. ECF No 8 at 3. Plaintiffs now seek another extension of time to effect service and request the Court's leave to serve Defendants through email, text message, posting on a public door, and publication. *Id.*

**II. Alternative Service**

Defendants must be properly served with process under Rule 4 before a federal court may exercise jurisdiction over them. *See Scott v. Sebelius*, 379 Fed. Appx. 603, 604 (9th Cir. 2010) (citing *Direct Mail Specialists v. Eclat Computerized Techs., Inc.*, 840 F.2d 685, 688 (9th Cir. 1988)). The Federal Rules of Civil Procedure do not expressly permit alternative service upon a defendant. However, Rule 4(e)(1) permits a plaintiff to serve a defendant "following state law for

1 serving a summons in an action brought in courts of general jurisdiction in the state where the district  
2 court is located or where service is made.” Fed. R. Civ. P. 4(e)(1). In this action the district court  
3 is in Nevada, but service is attempted in Arizona. ECF No. 8. If service is valid under the rules of  
4 one qualifying state, the court need not consider the law of the other qualifying state, nor need the  
5 court make any “choice of law” between qualifying states. *See Webster Indus., Inc. v. Northwood*  
6 *Doors, Inc.*, 244 F. Supp. 2d 998, 1005–06 (N.D. Iowa 2003) (cited by *Loc. Ad Link, Inc. v. Adzzoo,*  
7 *LLC*, Case No. 2:09-cv-01564-GMN, 2010 WL 3636173 (D. Nev. Sept. 9, 2010). Alternative  
8 service law may therefore be assessed under either Arizona or Nevada law. According to the  
9 Complaint, Defendants are residents of Arizona. Hence, the Court applies the rules established by  
10 Arizona for alternative service.

11 In 1982, the U.S. Supreme Court held that posting on an apartment building door did not  
12 comport with due process where it was well known that children and other tenants remove notices  
13 without the summoned person ever learning of the action. *Wright v. Beck*, 981 F.3d 719, 728 (9th  
14 Cir. 2020) (citing *Greene v. Lindsey*, 456 U.S. 444, 453 (1982)). To comport with due process, any  
15 method of service must be “reasonably calculated, under all the circumstances, to apprise interested  
16 parties of the pendency of the action and afford them an opportunity to present their objections.”  
17 *Wright*, 981 F.3d at 727 (internal citation omitted).

18 Arizona law enumerates several alternative methods for service of individuals and  
19 unincorporated associations if personal service is “impracticable.” Ariz. R. Civ. P. 4.1(k)(1); *see*  
20 *also Blair v. Burgener*, 245 P.3d 898, 903-04 (9th Cir. 2010) (“the showing for alternative service  
21 requires something less than a complete inability to serve the defendant because the defendant’s  
22 current address is unknown or the defendant ... has avoided service of process.”); *Barber v. Lilly*,  
23 Case No. CV-13-1270-PHX-LOA, 2013 WL 5498245, \*\*3-4 (D. Ariz. Oct. 1, 2013) (citing Ariz.  
24 R. Civ. P. 4.1(k) (personal service was impracticable after multiple failed attempts at personal service  
25 and that service by facsimile, email, and mail were enough to “assure that actual notice of the  
26 commencement of the action is provided to the person to be served”).

**III. Service by Posting a Notice, Email and Text is Denied. However, Alternative Service by Publication is Granted.**

Plaintiffs show personal service is impracticable under Arizona law. Plaintiffs attempted personal service at multiple addresses multiple times with no success. ECF No. 8 at 4. Plaintiffs demonstrate the required due diligence that must precede alternative service. *Blair*, 245 P.3d at 903. However, Plaintiffs fail to allege facts showing the door on which they seek to post notice is sufficiently reliable to warrant service by this method. The secured door is accessible to not only those who live in the apartment building, but also members of the public. While a pattern of removal is not shown, the notice could easily be removed by building management, another tenant or even a person walking by. The secured door does not serve as a “reliable means of acquainting interested parties of the fact that their rights are before the courts.” *Greene*, 456 U.S. at 454.

Email service requested by Plaintiffs also does not comport with due process. As the Court previously held, the email at which Plaintiffs propose to serve Defendants does not meet the due process requirements established by Arizona law. Plaintiffs found Defendants’ email address on a website at which Defendants may be contacted. *See* [www.insight-surgical-equipment.com](http://www.insight-surgical-equipment.com) showing the email address of [info@insight-surgical-equipment.com](mailto:info@insight-surgical-equipment.com). The email address does not appear to belong to a specific individual and there is nothing indicating that Plaintiffs (or anyone else for that matter) has been successful contacting Defendants through this email address.

Similarly, text messaging service does not comport with due process. The number Plaintiffs propose appears untested. Plaintiffs provide no facts demonstrating the phone number is connected to Defendant Sirota. A phone number must, when paired with other attempts at service, be calculated to reasonably “give Defendant actual notice of the proceedings.” Ariz. R. Civ. P. 4.1(d); *Barber*, 2013 WL 5498245 at \*\*3-4.

The above said and based on Plaintiffs substantial efforts to serve Defendants Cel Services Group, Inc. and Sirota, the Court allows alternative services by publication. As required by Arizona law, Plaintiffs must publish (1) the summons and a statement describing how a copy of the pleading being served may be obtained (2) in a newspaper that is promulgated in the county where the action is pending (Clark County, NV) and (3) in a newspaper that is promulgated in the county where the

1 last known address of Defendants (Maricopa County, AZ) (4) once a week for at least four successive  
 2 weeks. Ariz. R. Civ. P. 4.1(l)(2)(A). Plaintiffs must file a notice with the Court demonstrating  
 3 compliance with this process no later than ten (10) days after service by publication commences.  
 4 “Service is complete 30 days after the summons and statement is first published in all newspapers  
 5 where publication is required.” Ariz. R. Civ. P. 4.1(l)(2)(D).

#### 6 **IV. Order**

7 Accordingly, IT IS HEREBY ORDERED that Plaintiffs’ request for Alternative Service  
 8 (ECF No. 8) is GRANTED in part and DENIED in part.

9 IT IS FURTHER ORDERED that Plaintiffs are GRANTED an additional sixty (60) days  
 10 measured from the date of this Order to serve Defendants.

11 IT IS FURTHER ORDERED that service of the Summons and Amended Complaint in this  
 12 action be made on Defendants by publication of the Summons in a newspaper of general circulation  
 13 in the area of Cel Services Group, Inc.’s last address provided to the Arizona Corporation  
 14 Commission (Phoenix, Arizona) and in the Las Vegas Review–Journal or other newspaper of general  
 15 circulation in Las Vegas, Nevada, where this matter is currently pending. The publication must run  
 16 once per week for four consecutive weeks. The service of Summons and Amended Complaint will  
 17 be deemed complete upon the expiration of four weeks from the date of the first publication.

18 IT IS FURTHER ORDERED that Plaintiffs must file a notice of compliance with service by  
 19 publication within ten (10) days of the date publication commences.

20 IT IS FURTHER ORDERED that Plaintiffs must also serve a copy of the Amended  
 21 Complaint and Summons to Defendants via regular and certified U.S. Mail to Defendants’ last  
 22 known address.

23 IT IS FURTHER ORDERED that upon completion of attempted service by publication and  
 24 mail, Plaintiffs must file a notice of compliance with the Court.

25 Dated this 10th of June, 2022.

26  
 27   
 28 ELAYNA J. YOUCHAK  
 UNITED STATES MAGISTRATE JUDGE